

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
JOHN ARMENDARIZ, JR.,)
)
 Defendant.)

CASE NO. 8:04CR328

MEMORANDUM
AND ORDER

This matter is before the court for initial review of the defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a person in Federal Custody" (§ 2255). (Filing No. 149).

Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

After pleading guilty to Count I of the Fourth Superseding Indictment charging defendant with Conspiracy to Distribute a Controlled Substance in violation of 21 U.S.C. § 846 the court sentenced defendant to 151 months in the Custody of the Bureau of Prisons followed by five years supervised release.

In his § 2255 motion defendant raises sixteen issues. The United States shall respond to the defendant's claims by filing an Answer. In addition to any other issues

raised in the Answer, the United States shall address whether this claim is barred by procedural default, waiver, or untimeliness.

IT IS ORDERED:

1. The Court has completed the initial review of the defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 motion") (Filing No. 149);
2. On or before October 27, 2006, the United States shall file an Answer to the defendant's Second and Third Claims in the § 2255 motion and support its Answer with a brief;
3. On or before November 27, 2006, the defendant may file a responsive brief addressing only the Second and Third Claims;
4. The Clerk is directed to mail a copy of this Memorandum and Order to the defendant at his last known address.

DATED this 27th day of September, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge